

No. 9/5/84-6Lab/5340.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of Haryana Roadways, Sirsa :

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 371 of 1983.

BETWEEN

SHRI KEWAL KRISHAN SHARMA, WORKMAN AND THE MANAGEMENT OF HARYANA ROADWAYS, SIRSA.

Shri V. S. Singal, A.R. for the workman.
Shri V.K. Kohli, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub section (1) of section 10 of the Industrial Disputes Act, 1947; the Governor of Haryana, referred the following dispute, between the workman Shri Kewal Krishan Sharma and the management of Haryana Roadways, Sirsa, to this Court, for adjudication,—vide Labour Department Gazette Notification No. 62737-41, dated 1st December, 1983.

Whether the termination of services of Shri Kewal Krishan Sharma is justified and in order? If not, to what relief is he entitled?

2. On receipt of the order of reference notices were issued to the parties. The parties appeared. The case of the workman is that he was employed with the respondent as a Helper since 7th April, 1980 and all through his work and conduct has been satisfactory but the respondent choose to terminate his services on 1st July, 1982 without complying with the provisions of section 25F and G of the Industrial Disputes Act, 1947.

3. In the reply filed by the respondent preliminary objection taken is that no cause of action accrued in favour of the workman. On merits, it is alleged that the workman was appointed on daily wages and his appointment

was purely on monthly basis and his services could be terminated at any time without assigning any reason and so the provisions the Industrial Disputes Act, 1947, are not attracted in the case.

4. On the pleadings of the parties, the following issue was framed on 5th October, 1984 :—

1. Whether the termination of services of Shri Kewal Krishan Sharma is justified and in order? If not, to what relief is he entitled?

5. The workman appeared as his own witness WW-1 and WW-2 Shri Ramji Dass, Ticket Verifier, H. R. Sirsa and the management examined MW-1 Shri Niranjan Dass, Establishment Clerk.

6. Authorised Representatives of the parties heard. Documents pursued. My findings on the issue framed are as below :—

Issue No. 1:

7. There is no dispute that the workman was employed as Helper on daily wages with effect from 7th April, 1980. The management has examined its Head Clerk as MW-1, who has stated that the workman used to get wages for weekly rest also. He further stated that there are four weekly rest in a month and the letter of appointment was passed upto 31st March, 1982. On the other hand, the workman has examined WW-2 Shri Ram Ji Dass, Ticket Verifier Dealing Hand Daily Wages, Haryana Roadways, Sirsa. He stated that the workman remained employed upto 30th June, 1982. The learned Authorised Representative of the respondent Shri Kohli contended that there are discrepancies in the statement of WW-2 a clerk of the respondent and MW-1 Establishment Assistant of the respondent regarding the date after which the workman remained employed. Be that it may be so, the workman had actually worked for more than 240 days on the date his services were terminated, i.e., 30th June, 1982. Shri Kohli further contended that since the appointment of the workman was on monthly basis his case falls in the excluded category laid down under section 2 (oo) of the Industrial Disputes Act, 1947, because his appointment under agreement was for a fixed period. The contention is absolutely mis-conceived. Agreement stipulates by lateral agreement. In the present case, simply the order of appointment was passed by the General Manager and it is not on record that the same was conveyed or accepted by the workman. In AIR 1981 S. 1253 C. Mohan Lal v/s Bharat

Electronics Ltd. Their Lordship observed as under in paragraph number 7 and 9 of the judgement:-

Niceties and semantics apart, termination by the employer of the service of a workman for any reason whatsoever would constitute retrenchment except in cases excepted in the section itself. The excepted or excluded cases are where termination is by way of punishment inflicted by way of disciplinary action. Voluntary retirement of the workman, retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf, and termination of the service of a workman on the ground of continued ill-health.

In the instant case termination of service of the appellant does not fall within any of the exceptions or to be precise, excluded categories. Undoubtedly therefore the termination would constitute retrenchment. It is well settled that where prerequisite for valid retrenchment as laid down in Section 25-F has not been complied with, retrenchment bringing about termination of service is ab initio void;

8. So, the termination of services of the workman squarely falls within the ambit of term 'retrenchment' and as such the provisions of section 25F are fully attracted in this case. Since no prior notice or retrenchment compensation was paid by the respondent, order of termination was void ab initio and as such the same cannot be sustained. So, the workman is ordered to be reinstated and he cannot be denied the benefit of full wages, because he has been prompt in raising the demand notice within six months of the termination, because he was terminated on 30th June, 1982 and the demand notice on the file is dated 11th January 1983. So, the workman is ordered to be reinstated with continued of service and full back wages. The reference is answered and returned accordingly. There is no order as to cost.

Dated: 30th May, 1985.

B. P. JINDAL
Presiding Officer,
Labour Court,
Rohtak.

Endorsement No. 271/83/879, dated 13th June, 1985:

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL
Presiding Officer,
Labour Court,
Rohtak.

No. 9/5/84-6Lab/5341.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the Workman and the management of M/s. Haryana Dairy Development Co-operative Federation Ltd., Gohana Road, Milk Plant, Rohtak.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK,

Reference No. 55 of 82

BETWEEN

SHRI DIDAR SINGH, WORKMAN AND THE MANAGEMENT OF M/S. HARYANA DAIRY DEVELOPMENT CO-OPERATIVE FEDERATION LTD., GOHANA ROAD, MILK PLANT, ROHTAK

Present :—

Shri S.N. Vats, A.R. for the workman.
Shri K.L. Nagpal, A.R. for the respondent.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Didar Singh and the management of M/s. Haryana Dairy Development Co-operative Federation Ltd, Gohana Road, Milk Plant, Rohtak, to this Court, for adjudication,—vide Labour Department, Gazette Notification No. ID/PTK/143/81/16404, dated 26th March, 1982 :—

Whether the termination of service of Shri Didar Singh was justified and in order? If not, to what relief is he entitled?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that he was employed with the respondent as a Dairyman since the month of October, 1977, but the respondent choose to terminate his services unlawfully on 7th July, 1981 in flagrant disregard of the provisions of the Industrial Disputes Act, 1947.

3. In the reply filed by the respondent, claim of the workman has been controverted. It is alleged that the workman has mis-represented his case, because the workman was guilty of serious mis-conducts, for which, his services were terminated. It is alleged that he attempted to commit theft of about 8 K.G. milk from the factory premises on 5th June, 1981 and further there was shortage of 8(SFM) sweetened flavour Milk bottles from his charge on receipt of a supply of 5640 bottles from Ambala Plant on 6th June, 1981, regarding which, show cause notice was issued to the workman and his reply was found to be unsatisfactory in one case regarding attempted theft of milk but no response was received from the workman to other show cause notice and that after holding proper enquiry, the services of the workman were terminated.

4. On the pleadings of the parties, the following issues were settled for decision on 26th July, 1982 :—

- (1) Whether the management conducted a fair and proper enquiry? OPM
- (2) Whether the management lost complete confidence in the workman? OPM.
- (3) Whether the termination of service of Shri Didar Singh was justified and in order? If not, to what relief is he entitled?

5. The management examined MW-1 Shri P. S. Dangi, Store Keeper, MW-2 Shri Ashu Lal, Dairy Supervisor MW-3 Shri Raiha Charan, Chowkidar, MW-4 Shri R. P. Chiller, Establishment Assistant and MW-5 Shri Nathu Ram, Dairyman. On the other hand, the workman appeared as his own witness as MW-1.

6. Learned Authorised Representatives of the parties heard. Documents perused. My findings on the issues framed are as below :—

Issue No. 1:

7. The learned Authorised Representative of the respondent Shri K. L. Nagpal, frankly conceded that no valid and legal domestic enquiry was held in this case by the management, so, this issue is answered against the management.

Issue No. 2:

8. On this issue Shri Nagpal contended that since the workman was holding a position of trust being a Dairyman in the Milk Plant, who was exposed to temptations to pilfer article from his charge, his reinstatement would not be in the interest of the management, because the workman will have ample opportunities to commit thefts in future also. I am not inclined to go with him on this point. From the evidence on record, it is not proved that the workman was guilty of attempted theft of 8 K.G. of milk on 5th June, 1981 or he could be held liable for the shortage of 8 bottles of (SFM) allegedly received from Ambala Plant. Even if, it be believed that any such attempt was made by the workman or the shortage of any bottle was because of his negligence, the management was not justified in terminating his service in the manner he did without holding any domestic enquiry in that behalf. At this stage Shri Nagpal has drawn my attention to Ex. MW-5/1 an extract from the Can Check Register allegedly filled up by Shri Nathu Ram, Dairyman, who took charge on 8th June, 1981 from the aggrieved workman of the SFM bottles. From this extract it is sought to be argued that the liability for the 8 missing bottles be fastened upon the aggrieved workman. In my opinion, if any act of theft was committed by the workman, a probe into the same should have been held and thereafter liability fastened upon him. Furthermore, there is no mention in the order of termination Ex. MW-4/3 that any shortage of 8 SFM bottles were found when the aggrieved workman handed over the charge to his successor in the shift Shri Nathu Ram MW-5. Under these circumstances, it is difficult to hold even from the evidence adduced in the Court that the workman was guilty of attempted theft 8 K.G. of milk or 8 SFM bottles were found missing when he handed over the charge to his successor Shri Nathu Ram Dairyman and as such there is no question of the management losing confidence in the workman on this account.

Issue No. 3:

9. In the light of my decision on issues No. 1 and 2 the order of termination, copy of which Ex. MW-4/3 cannot be sustained having been passed in gross violation of the provisions

of principles of natural justice and in flagrant disregard of the provisions of section 25F of the Industrial Disputes Act, 1947, and the same is set aside.

10. On the question of relief Shri Nagpal contended that the workman be not awarded full back wages, because he has remained gainfully employed after his termination. In that behalf he has drawn my attention to the admission of the workman himself when he appeared in the Court that after his termination he has been working as a Cropsharer with somebody and earning a sum of Rs. 100/- or Rs. 200/- p.m. He further contended that the respondent federation is in financial doldrums and as such burdening the respondent with full wages would be unjustified. I, am inclined to go with him. Taken into consideration to the fact that the workman has remained gainfully employed, if not to the fullest extent and the fact that the economic position of the respondent federation is not very flattering, I, award the workman back wages to the extent of 40%. So, the workman is ordered to be reinstated with continuity of service and 40% back wages. The reference is answered and returned accordingly. There is no order as to cost.

Dated: 30th May, 1985.

B. P. JINDAL

Presiding Officer,
Labour Court,
Rohtak.

Endorsement No. 55-82/880, dated 13th June, 1985

Forwarded (four copies), to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Dispute Act, 1947.

B. P. JINDAL

Presiding Officer,
Labour Court,
Rohtak.

No. 9/5/84-6 Lab./5342.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between

the Workman and the management of the Haryana Roadways, Hissar :—

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 222 of 80.

Between

SHRI OM SINGH, WORKMAN AND THE MANAGEMENT OF THE HARYANA ROADWAYS, HISSAR.

Present :—

Shri S. S. Gupta, A. R., for the workman.

Shri Jagbir Singh, A. R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Om Singh and the management of The Haryana Roadways, Hissar, to this Court for adjudication,—vide Labour Department Gazette Notification No. ID/HSR/33-80/51758, dated 3rd October, 1980 :—

Whether the termination of services of Shri Om Singh was justified and in order? If not, to what relief is he entitled?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that he was employed with the respondent for the last many years, but the respondent choose to terminate his services unlawfully on 11th June, 1979 and the said order of termination is malafide, illegal and unjustified, because no proper and valid enquiry was held and the procedure adopted by the Enquiry Officer was not in consonance with the principles of natural justice and that the punishment awarded to the workman was shockingly disproportionate in relation to the charges levelled against him and hence there is a prayer for reinstatement and full back wages.

3. In the reply filed by the respondent, it is alleged that the services of the workman were terminated after valid and proper enquiry was held against the workman in relation to serious misconduct because there were many complaints against the workman.

4. On the pleadings of the parties, the following issues were framed on 23rd December, 1981 —

- (1) Whether the enquiry held by the management is fair and proper? If so, to what effect?
- (2) Whether the termination of services of Shri Om Singh was justified and in order? If not, to what relief is he entitled?

5. The management examined MW-1 Shri Ramesh Kumar, Clerk MW-2 Shri Mahesh Chand Lamba, Station Supervisor and MW-3 Shri Kashmiri Lal, Inspector. It also examined MW-4 Shri Ram Kishan, adda Conductor beside MW-5 Shri Hem Raj, Inspector. The workman appeared as his own witness as WW-2 and also examined WW-1 Shri Om Parkash, Chowkidar.

6. The learned Authorised Representatives of the parties heard. Documents perused.

7. Certain facts are undisputed. The management has placed on record complete enquiry file. The perusal of the same reveals that as many as 14 specific charges of embezzlement of various dates were levelled against the workman and two separate charge-sheets dated 6th February, 1978 and 23rd September, 1977 were issued. but there is nothing on record that these charge-sheets or accompanying list of allegations were ever served upon the workman. No replies were obtained from the workman and as such nothing has been placed on record. There is no specific order on the file that the workman has refused to avail of the opportunity of furnishing explanation to the charges levelled against him. The management has examined as many as six witnesses. Statement of MW-1 Shri Ramesh Kumar is formal. The important witness is MW-2 Shri Mahesh Chand Lamba, the Enquiry Officer, MW-3 Shri Kashmiri Lal, Inspector and MW-5 Shri Hem Raj. Shri Kashmiri Lal and Shri Hem Raj have been examined by the management to prove the charges of embezzlement dated 28th November, 1977 amounting to Rs. 4.20 and dated 1st July, 1977, amounting to Rs. 2.25. The learned Authorised Representative of the workman rightly contended that the enquiry report suffers from serious infirmities both procedural and factual. He made a pointed reference to the fact though 14 specific charges of embezzlement were referred to the Enquiry Officer to give his findings but he choose to give his findings for two embezzlement cases

dated 1st July, 1977 and 28th November, 1977. The enquiry report is silent as to the reasons as to why the other charges could not be probed, because the order of the General Manager,—vide which, he was appointed as Enquiry Officer was to conduct a probe into all the 14 charges. Shri S. S. Gupta, also assailed the enquiry report and in my opinion, rightly, that the same is based upon surmises and conjectures, because the Enquiry Officer imported his personal knowledge while giving finding against the workman. He further pointed out that as per the order on the enquiry file dated 22nd March, 1978 on page No. 113, the workman was given an opportunity of cross examining the witnesses, namely, Shri Hem Raj and Kashmiri Lal have been cross examined after they had been examined and their examination-in-chief had been closed and after the statement of the workman had been recorded by the Enquiry Officer. This procedure adopted by the Enquiry Officer is no way near to the settled principles of natural justice that no body can be punished unheard. This Court has yet to come across any case of domestic enquiry, in which, the Enquiry Officer had given an opportunity of cross examination to the aggrieved employee after recording his statement during the enquiry proceedings. Besides these glaring infirmities pointed out, there are many more, which need not be detailed, because the points discussed above are sufficient to hold that the enquiry was not conducted according to the settled principles of natural justice, in which, the workman was not given an opportunity of participation and furthermore, the findings given by the Enquiry Officer are based upon conjectures and surmises and lastly the said report cannot be said to be complete one, because the Enquiry Officer of his own accord, choose not to probe into the other alleged 12 cases of embezzlement against the workman and the learned General Manager, Roadways, Hissar, who passed the order of termination based upon the enquiry report Shri Lamba also did not choose to press the Enquiry Officer to send a complete report regarding allegations against the workman and even then he choose to pass an order of termination. I am constrained to observe that the order passed by the General Manager is not a speaking one. There is no discussion at all cases of embezzlement against the workman. Under the circumstances, I find that the enquiry in the present case was not valid and proper and the order of termination based upon the same cannot be sustained.

Faced with this situation the learned Authorised Representative of the respondent Shri Jagbir

Singh contended that this Court can appraise the evidence of the Inspector afresh and arrive at his own conclusion regarding the allegations against the workman, but no such right has been reserved by the management to adduce any evidence in case, the enquiry report is found to be invalid and improper.

Since the issue regarding domestic enquiry has gone against the management, the second issue framed in this case need not be gone into and as such, the workman is ordered to be reinstated with continuity of service and since, the workman has been prompt in raising the demand notice within a year of his termination, he cannot be denied the benefit of back wages. The

reference is answered and returned accordingly. There is no order as to cost.

Dated 28th May, 1985:

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Hissar.

Endorsement No. 222-80/873, dated 13th June,
1985

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Hissar.

The 5th August, 1985

No. 9/5/84-6Lab/6447.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, (Central Act No. XIV of 1947); the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of The Executive Engineer, City Operation Division H. S. E.B., Rohtak.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 166 of 1981

between

SHRI OM PARKASH, WORKMAN AND THE MANAGEMENT OF THE EXECUTIVE ENGINEER, CITY OPERATION DIVISION, HARYANA STATE ELECTRICITY BOARD, ROHTAK

Present:-

None for the petitioner.

Shri Amar Nath, A. R., for the respondent.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Om Parkash and the management of The Executive Engineer, City Operation Division Haryana State Electricity Board, Rohtak, to this Court, for adjudication,—*vide* Labour Department Gazette Notification No. ID/RTK/110/81/61248 dated 23rd December, 1981:—

Whether the termination of service of Shri Om Parkash was justified and in order? If not, to what relief is he entitled?

2. On receipt of the order of reference, notices were issued to parties. The parties appeared. The claim of the workman is that he was appointed on daily wages on 8th October, 1979 but his services were illegally terminated by the respondent on 22nd May, 1981 without any prior notice or payment of any retrenchment compensation as envisaged under section 25. F of the Industrial Disputes Act, 1947. So, he has prayed for reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent, the claim of the workman has been controverted in *toto*. Therein it is alleged that the services of the petitioner were terminated on 31st May, 1981 on account of completion of work. *Inter alia* it is alleged that this reference is bad in law and that no cause of action has accrued in favour of the petitioner.

4. On the pleadings of the parties, the following issue was framed on 4th August, 1982 :
 Whether the termination of services of the workman was justified and in order ? If not, to what relief is he entitled ?
5. After the management had examined one witness and closed its evidence and the case was fixed for the evidence of the workman, the workman, absented. The only inference possible is that the workman is not interested in prosecution of this reference and as such the same is dismissed for non-prosecution and answered accordingly.

The 12th June, 1985.

B. P. JINDAL,
 Presiding Officer,
 Labour Court, Rohtak.

Endst. No. 116-81/1088, dated 27th July, 1985

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
 Presiding Officer,
 Labour Court, Rohtak.

No. 9/5/84-6Lab/6453.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s. Ajay Udyog (P) Ltd., Bahadurgarh.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 176 of 84

between

SHRI BHAGWAN SINGH, WORKMAN AND THE MANAGEMENT OF M/S. AJAY UDYOG (P) LTD., BAHADURGARH

None for the workman.

None for the respondent.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Bhagwan Singh and the management of M/s. Ajay Udyog (P) Ltd., Bahadurgarh, to this Court, for adjudication, —vide Labour Department Gazette notification No. 33621-26, dated 3rd September, 1984:

Whether the termination of services of Shri Bhagwan Singh is justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The workman appeared but the respondent did not. Otherwise, the claim of the workman is that he was employed with the respondent as a Mistry since 20th May 1981 on monthly wages of Rs 375 but the respondent choose to terminate his services unlawfully on 25th November, 1983 in flagrant disregard of the provisions of the Industrial Disputes Act, 1947.

3. As already observed, the respondent did not appear inspite of service through registered A. D. and so, ex parte proceedings order was passed against the respondent on 27th December, 1984.

4. Later on, the workman too absented and as such this reference was ordered to be dismissed for non prosecution and answered accordingly. There is no order as to cost.

Dated the 13th June, 1985.

B. P. JINDAL,
 Presiding Officer,
 Labour Court, Rohtak.

Endst No. 176-84/1100, dated the 27th July, 1985.

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
 Presiding Officer,
 Labour Court, Rohtak.

KULWANT SINGH,

Secretary to Government Haryana,
 Labour and Employment Department.